



State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



Peter Musty  
646 Mosquitoville Road  
Ryegate, VT 05046

Re: Indian Pont Road  
Piermont, New Hampshire

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
No. AF 02-024**

June 28, 2002

**I. INTRODUCTION**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Peter Musty, pursuant to RSA 482-A and Wt 100-700. The Division is proposing that fines totaling \$500 be imposed against you for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. PARTIES**

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Peter Musty is an individual having a mailing address of 646 Mosquitoville Road, Ryegate, Vermont 05046.

**III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS**

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 et seq. to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. On March 9, 2000, personnel from the New Hampshire Department of Resources and Economic Development, Division of Forests and Lands ("DRED") issued Official Notice No. 14-00-011 ("Notice") to Peter Musty regarding property located off Indian Pond Road, Piermont, and identified

on Piermont Tax Map R8 as Lot 14. The Notice stated that Peter Musty had failed to file a "Notification of Forest Management Activities Having Minimum Wetlands Impact" form ("Notice Form") with the Department of Environmental Services ("DES") Wetlands Bureau and that Mr. Musty crossed a stream without an appropriate crossing device.

4. On February 14, 2001, DES personnel issued a "Notice of Complaint" letter to Mr. Musty, which reiterated what the DRED Ranger had told Mr. Musty on March 9, 2000. This letter requested that Mr. Musty fill out and return a Notice Form within 48 hours of receipt of the letter.

5. As of today's date, DES has not received the Notice Form or any other correspondence from Mr. Musty.

#### **IV. VIOLATION ALLEGED AND PROPOSED ADMINISTRATIVE FINE**

1. Peter Musty has violated RSA 482-A:3, I and RSA 482-A:14, III by constructing a minimum impact forestry crossing without a permit from DES. For the violation identified in IV.1, above, Env-C 614.02(a)(1) specifies a fine of \$500.

**The total fine being sought is \$500.**

#### **V. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING**

**Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than July 19, 2002 using the enclosed colored form.**

1. If you would like to have a hearing, please sign the appearance section of the colored form and return it to the DES Legal Unit, as noted on the form. A Notice of Scheduled Hearing will be issued.
2. If you choose to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If you wish to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

#### **VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove.

by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- \* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence**, applies in this case:

The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.
3. You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

**\*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\***

**An administrative fine hearing is a formal hearing.** Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

**If you wish to have an informal meeting to discuss the issues, you must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.**

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If you have any questions about this matter, please contact the DES Legal Unit, at (603) 271-6330.



**COPY**

Harry T. Stewart, P.E., Director  
Water Division

Enclosure (*NHDES Fact Sheet #CO-2000*)

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cc     Gretchen Rule, Administrator, DES Legal Unit  
       Susan Alexant, DES Rules & Hearings Attorney  
       Harry T. Stewart, P.E., Director  
       Marjory Swope, NHACC  
       Jennifer Patterson, Sr. Asst. Attorney General, EPB, N.H. Dept of Justice  
       Helga Mueller, Chair, Piermont Conservation Commission  
       Piermont Board of Selectmen  
       Linda Lambert, Town Clerk, Piermont  
       Stephen Kessler, DRED